

NEW APPLICATION



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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES
Chairman

2010 JAN -6 P 4:32

GARY PIERCE
Commissioner

AZ CORP COMMISSION
DOCKET CONTROL

PAUL NEWMAN
Commissioner

Arizona Corporation Commission

DOCKETED

SANDRA D. KENNEDY
Commissioner

JAN -6 2010

BOB STUMP
Commissioner

DOCKETED BY

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In the Matter of the Application of Level 3
Communications, LLC for a Limited Waiver of the
Public Utility Holding companies and Affiliated
Interest Rules (A.A.C. R14-2-801 et seq.)

Docket No: T-03654A-10-0002

APPLICATION FOR A
LIMITED WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES
AND AFFILIATED INTERESTS RULES (A.A.C. R14-2-801 et seq.)

Level 3 Communications, LLC ("Level 3 LLC"), pursuant to A.A.C. R14-2-806 and any other regulations deemed applicable, requests a limited waiver of the Arizona Corporation Commission's ("Commission") Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R12-2-801 to R12-2-806 (the "Rules") to participate in a financing arrangement. Level 3 Financing, Inc. ("Issuer") intends to issue \$640 million in 10% Senior Notes due 2018 to qualified institutional buyers ("Buyers") in an offering that is exempt from registration under U.S. Federal securities laws.¹ The Issuer will lend the net proceeds it receives in the offering of the notes to its subsidiary, Level 3 LLC, in return for an intercompany demand note issued by Level 3 LLC to the

¹ The Commission previously granted approval to Applicant for a similar financing arrangement of \$700 million in Decision No. 68962 issued in Docket No. T-03654A-06-0231 on August 29, 2006. As described herein, the funds will be used to repurchase previously issued notes that were issued at the rate of 12.25% and are due in 2013.

1 Issuer.² Level 3 LLC seeks approval for this refinancing transaction and its related guarantee of
2 the notes issued by the Issuer to Buyers.

3 The financing arrangement replaces an existing financing arrangement, pursuant to
4 substantially similar terms and conditions coupled with an extended maturity date to 2018 from
5 2013. Expedited treatment is necessary to meet the demands of the limited and time-sensitive
6 market opportunity under which the Issuer, underwriters, and Buyers are all operating. Timely
7 closing of this arrangement will enable the Issuer to refinance \$550 million of debt at very
8 attractive economic terms. Applicant requests that the Commission grant its approval of this
9 transaction no later than 45 days from the date of this filing to allow Applicant to timely
10 consummate the proposed transaction and meet important business and financial objectives.
11

12 In support, Applicant states:

13 **INTRODUCTION**

14 Based on its operational revenues, Level 3 LLC is considered a Class A utility and is,
15 therefore, subject to the Rules. The Rules regulate the formation of public utility holding
16 companies and certain transactions and activities between public service corporations and their
17 affiliated interests. According to the Commission, the Rules are intended to: (i) prevent the
18 commingling of utility and non-utility funds; (ii) prohibit cross-subsidization of non-utility
19 activities by utility ratepayers; (iii) prevent negative impact of non-utility activities on a utility's
20 financial credit; and (iv) ensure that the utility and its affiliates provide the Commission with the
21 information necessary to "carry out its regulatory responsibilities." See A.C.C. Decision No.
22 56618.
23
24

25
26 ² To the extent such a note would ordinarily require approval under A.R.S. §40-301 et seq., Level 3 LLC is exempt pursuant to the provisions of A.R.S. §40-301.D.

1 Applicant respectfully submits that, in light of the Rules' stated purposes, Applicant
2 should be exempt from the requirements of the Rules for the purposes of the financing
3 arrangement described herein. As explained below, Applicant operates in a highly competitive
4 environment that effectively protects customers from activities that will detrimentally affect
5 service to customers. As a result, a limited waiver of these Rules is in the public interest.
6 Therefore, Applicant requests a limited waiver of the Rules as they may apply to the financing
7 arrangement described below.
8

9 **DESCRIPTION OF PARTIES**

10 **A. Level 3 Financing, Inc.**

11 Level 3 Financing, Inc. ("Issuer"), is a Delaware corporation with principal offices located
12 at 1025 Eldorado Boulevard, Broomfield, Colorado 80021. Issuer is a wholly owned subsidiary
13 of Level 3 Communications, Inc. ("Parent"), a Delaware corporation, and is the direct parent of
14 Level 3 Communications, LLC and other subsidiaries, and is not a certificated
15 telecommunications service provider in Arizona or elsewhere.
16

17 **A. Level 3 Communications, LLC**

18 Level 3 Communications, LLC is a Delaware limited liability company and is a wholly
19 owned subsidiary of Level 3 Financing, Inc. ("Issuer"), which in turn is a wholly owned
20 subsidiary of Level 3 Communications, Inc. ("Parent"). All three companies have principal
21 offices located at 1025 Eldorado Boulevard, Broomfield, CO 80021. Level 3 LLC provides high-
22 quality voice and data services to carriers, ISPs, and other business customers over its IP-based
23 network. Level 3 LLC is a non-dominant carrier authorized to provide resold and/or facilities-
24 based telecommunications services nationwide pursuant to certification, registration or tariff
25
26

requirements, or on a deregulated basis. Level 3 LLC is also authorized by the Federal Communications Commission to provide international and domestic interstate services as a non-dominant carrier.

In Arizona, Level 3 is authorized to provide facilities-based and resold local exchange, toll and access services pursuant to a certificate granted Decision No. 61737 issued by the Commission in Docket No. T-03654A-98-0641 on June 4, 1999.

CONTACT INFORMATION

Inquiries or copies of any correspondence, orders, or other materials pertaining to this Application should be directed to:

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DESCRIPTION OF THE TRANSACTION

Applicant requests Commission approval to participate in a financing arrangement between the Issuer and Level 3 LLC whereby Level 3 LLC will incur indebtedness as described below and provide a guarantee for a total aggregate amount of \$640 million in notes issued by the Issuer to Buyers. Level 3 Financing, as the issuer of the notes, will lend the net proceeds it receives along with additional cash on hand to Level 3 LLC in return for an intercompany demand note issued by Level 3 LLC in the amount of \$640 million. The funds will be used to purchase previously issued notes that were issued at the rate of 12.25% and are due in 2013. Level 3 LLC will also issue an unsecured guarantee of the Issuer's 10% Senior Notes due 2018. Accordingly, Level 3 LLC seeks approval from the Commission for this indebtedness and the guarantee of the notes issued by Level 3 Financing.

Applicant emphasizes that participation in the financing arrangement as a guarantor will not result in a change in Level 3 LLC's management or in its day-to-day operations in Arizona; nor will it adversely affect Level 3 LLC's operations in Arizona. The financing arrangement will enable Level 3 LLC to bring services to new markets and allow more consumers to benefit from its competitive services. Accordingly, and to the extent required, Applicant requests that the Commission approve the participation of Level 3 LLC in the financial arrangement described herein.

BASIS FOR LIMITED WAIVER

- A. The Proposed Transaction Will Not Directly or Indirectly Result in or Cause an Increase in Applicants' Maximum Rates on File with the Commission for Any Competitive Service.

1 The Commission previously has granted partial waivers of the Rules. *See, e.g.*, Decision
2 No. 64737. In granting such waivers, the Commission determined that only when a transaction
3 “could directly or indirectly result in or cause an increase in its maximum rate on file with the
4 Commission for any competitive service” would a company have to make the necessary filings
5 under A.A.C. R14-2-803, R14-2-804(A), (B), and (C), and R14-2-805. Applicant requests that
6 the Commission employ a consistent analysis to its request for a limited waiver of the Rules for
7 Applicant’s participation in the financing arrangement.
8

9 Level 3 LLC primarily provides competitive wholesale services to other carriers, VoIP
10 providers, and Internet Service Providers. The market for such services is highly competitive and
11 prices are set by competition. With every product pricing change initiated by Level 3 LLC,
12 competitors inevitably introduce new services or re-price their service in a manner believed to be
13 even more attractive to the consumer. Accordingly, neither Level 3 LLC nor its subsidiaries have
14 incentive or ability to charge unduly high or above-market prices that could be used to fund or
15 subsidize unregulated affiliates or to commingle utility and non-utility funds in a manner that is
16 harmful to Arizona consumers.
17

18 In addition, immediately following Applicant’s participation in the financing arrangement,
19 Applicant will continue to offer the services they offer with no change in the rates or terms and
20 conditions of service. Applicant does not anticipate that the financing arrangement will cause it to
21 increase its maximum rates on file with the Commission for their competitive services.
22

23 B. Applicant’s Participation in the Financing Arrangement is in the Public Interest

24 Approval of the proposed financial arrangements described herein will serve the public
25 interest in promoting competition among telecommunications carriers by providing Level 3 LLC
26

1 with the opportunity to strengthen its competitive position through access to greater financial
2 resources. Furthermore, by increasing the breadth and scope of telecommunications services
3 made available through an increased ability to expand Level 3 LLC's operations, greater access to
4 capital will also strengthen Level 3 LLC's ability to bring competitive telecommunications
5 services to consumers in the State of Arizona. This financing transaction will be transparent to
6 consumers and consumers will benefit from the continued receipt of quality telecommunications
7 services that are priced competitively.
8

9 **RELIEF REQUESTED**

10 Applicant respectfully requests the following:

11 1. Waiver of the requirement under A.A.C. R14-2-804(B) that Applicant obtains
12 Commission approval, to the extent necessary, prior to entering into the financing arrangement
13 described herein. In the alternative and pursuant to A.A.C. R14-2-804(B), Applicant requests
14 approval to guarantee the Senior Notes.
15

16 2. Waiver of any other applicable requirements of the Rules as they may apply to the
17 transaction described herein.

18 3. Any other approvals deemed necessary for the transaction described in this
19 Application.
20

21 **CONCLUSION**

22 For the foregoing reasons, Applicant respectfully requests that the Commission grant a
23 limited waiver as set forth above, or, in the alternative, approve Applicant's guarantee of the
24 Senior Notes. Applicant also requests that any condition that it file any of the transaction
25
26

documents be limited to a filing with Commission Staff and subject to an appropriate Protective Agreement.

RESPECTFULLY SUBMITTED this 6th day of January, 2010.

LEWIS AND ROCA LLP



Thomas H. Campbell
Michael T. Hallam
40 North Central Avenue
Phoenix, AZ 85004

Attorneys for Level 3 Communications, LLC

ORIGINAL and thirteen (13) copies
of the foregoing filed
this 6th day of January, 2010, with:

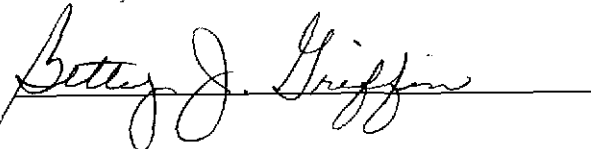
The Arizona Corporation Commission
Utilities Division – Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 6th day of January, 2010, to:

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Lyn Farmer, Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007



VERIFICATION

STATE OF COLORADO

§

§

COUNTY OF BROOMFIELD

§

I, William P. Hunt, state that I am Vice President Public Policy for Level 3 Communications, LLC; that I am authorized to make this Verification on behalf of Level 3 Communications, LLC and its subsidiaries; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.

William P. Hunt 3l

Name: William P. Hunt

Title: Vice President Public Policy
Level 3 Communications, LLC

SWORN TO AND SUBSCRIBED before me on the 5 day of January, 2010.

Cheyenne Tipton
Notary Public

My commission expires: 11-23-2013

